APPENDIX

EXCERPT FROM COMMISSION'S OPINION No. 418 (opinion and order granting license):

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D. *Federal Development*

Whether we should recommend federal development rather than development by PNPC is an important issue. We think this issue must be resolved against federal development contrary to the arguments of the Secretary of the Interior. The applicable Section 7(b) of the Power Act provides as follows:

> Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find appropriate concerning such development. [41 Stat. 1067; 49 Stat. 842; 16 U.S.C. 800]

We agree with our staff and the examiner that the record supports no reason why federal development should be superior to development by PNPC, and we see no reason why we should withhold a license and recommend that the United States build the project.

While we have extensive material before us on the position of the Secretary of the Interior, there is no evidence in the record presented by him to support his position. The Secretary contends initially that we are in effect bound to a decision in favor of federal development, because Congress has made a determination that the water resource (i.e., the Columbia and Snake Rivers) should be federally developed to the extent of nine-run-of-river dams downstream and that the development of the large storage at HMS affects this federal development. We agree, of course,

that in meeting our responsibilities under Section 7(b) we should consider the past history of a river basin as it sheds light on the future. While it is true that there are nine federal projects, authorized or constructed on the Snake and Columbia Rivers downstream from the projects here proposed,[36] it is also relevant that we have previously authorized major non-government projects on the main stem of the Columbia above the confluence with the Snake [37] and on the Snake above the HMS site.[38]

The fact that the Congress from time to time has authorized considerable federal development within this expansive river basin does not compel a determination that federal development is appropriate with respect to all projects on the river. Our decision must rest upon an evaluation of all the factors relevant to the development on this reach of the Snake at this time.

The factors argued by the Secretary in support of federal development are that federal development offers lower costs, that flood control can be better effected by flexible federal operation than by limitations written into the license, that the Interior Department can better prevent damage to fish than provisions in the license and inadequate supervision by us, that federal development can better provide recreational facilities for an expanding population, and that full co-ordination of the Northwest Power Pool is possible only if the United States constructs and operates the project. He adds that immediate construction of the project would produce an excess of power in the Pacific Northwest which would cause large losses to BPA and severe harm to the economy of the region.

Cost savings to consumers at the expense of the taxpayers of the country at large may, of course, follow from federal development as a result of low cost financing and absence of tax obligations. If this possibility were the criterion, it would be our duty to recommend federal de-

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[36] Bonneville, The Dalles, John Day, McNary, Ice Harbor, Lower Monumental, Little Goose, Lower Granite, and Asotin.

[37] See *e.g.*, Priest Rapids, Wanapum, Rock Island, Rocky Reach, Wells.

[38] The Brownlee, Oxbow and Hells Canyon developments of the Idaho Power Company.

velopment in almost all cases. Obviously the Federal Power Act does not contemplate any such result.

While flood control (in the event of Canadian storage) and navigation are objectives of lesser significance relative to the proposed projects, provisions in a license with respect to these matters were recommended by the Chief of Engineers, United States Army, were included by the examiner in his recommended decision and will be included substantially here. The proposed project will provide substantial recreational opportunities. In accordance with recommendations made by the Assistant Secretary of Agriculture we shall provide, as did the examiner, that the licensee shall co-operate with local, state and federal agencies in the study and preparation of a recreation public use plan and that such a plan be filed for approval by the Commission. In addition, Article 17 places an affirmative obligation upon the licensee to construct and operate such recreational facilities as may be necessary and desirable.

As for the fish problem we shall provide, as did the examiner, that the licensee shall construct protective devices and modify the project works and operations as we may prescribe hereafter upon our own motion or upon the recommendation of the Secretary of the Interior or the state conservation agencies. We shall also provide that should the United States desire to construct fish handling facilities, the licensee shall permit the United States to use its property free of cost. We see nothing to lead us to believe that the Federal Government could do more. Specifically, there is nothing in this record to indicate that the purposes described above will not be served as adequately under the license conditions as would be the case under federal development.

The Secretary of the Interior puts considerable stress on the factor of coordination arguing that a federal project would be better co-ordinated with other federal projects downstream. We agree that the Secretary (or any single operator) normally would have a superior ability to coordinate the operations of HMS with the other affected projects on the river. But there is no evidence upon which we can determine the scope or the seriousness of this mat-

ter in the context of a river system which already has a number of different project operators and an existing co-ordination system, i.e., the Northwest Power Pool.[39] The parties comprising PNPC are among those having projects on the river. They are members of the Pool and their record of cooperation is good. PNPC has designed its project to be operated and co-ordinated with the Northwest Power Pool in order to benefit all members. To implement this co-ordination and operation we shall use a provision substantially as found in the Wells Project license[40] as requested by both PNPC and the staff, to provide that the licensee shall operate the project in complete co-ordination with the Northwest Power Pool. We have continuing jurisdiction and will insist that this be done. The record does not show that federal ownership is necessary to achieve this result or that proper co-ordination would not be achieved in the absence of federal development.

In short, on the basis of the record here, plus such information of which we can take official notice, there is little if anything which would persuade us that federal development of HMS was inherently superior to licensing it to PNPC even assuming that the actual choice we had before us was between federal construction now and non-federal construction now. But these are not the true alternatives. The Department of Interior has frankly admitted it has no present intention of seeking authorization to commence construction or planning to construct an HMS project. Under these circumstances, federal construction of an HMS project is not foreseeable even assuming Congress would be willing to authorize a federal project where PNPC is willing and eager to construct it under the terms, conditions and provisions of the Federal Power Act.

One of the principal reasons for the Department's opposition to non-federal construction appears to be its concern over a decline in BPA revenues which it feels might be

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[39] This Pool is a voluntary arrangement among utilities, both public and private in the Pacific Northwest area, including BPA for the co-ordination and operation of their affected systems.

[40] Public Utility District No. 2 of Douglas County, Washington, Project No. 2149, 28 FPC 128, 133.

accelerated if HMS power were made available directly or indirectly to some of its existing customers. As indicated above, however, we are convinced that PNPC specifically will have a need for the additional power which could be made available by early construction of HMS, and the Pacific and the West Coast areas, in general, will have a need for the power at the time HMS will be completed. In summary, the delay inherent in federal construction would foreclose power coming on the line at a time when it will be required. This disadvantage outweighs those benefits which Interior contends would result from federal construction (i.e., superior co-ordination and non-power benefits discussed above), assuming *arguendo,* that such benefits would be realized.

To conclude, Section 7(b) of the Act provides for federal construction where, in our judgment, there is some good reason showing that the development of any water resource for public purposes should be undertaken by the United States. HMS is principally a power project. Neither the record nor our general knowledge of the Columbia River System discloses any major benefits which would result from federal construction over that by PNPC. In the event PNPC is adjudged not to have priority, it might then be necessary to re-evaluate the Secretary's proposal. This would be particularly appropriate respecting WPPSS since its fortunes are so inextricably intertwined with those of the Interior Department.

EXCERPT FROM COMMISSION'S OPINION No. 418-A (opinion and order on rehearing):

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Interior initially reargues that "there is no present regional need for the power to be generated by the High Mountain Sheep project which would balance the probable damage to the fish resource." In our original opinion we took cognizance of developments affecting the power generating capability of the Pacific Northwest which occurred since the close of the record. Specifically, we considered the power to be generated by Hanford, Wells and from Canadian Storage. On the basis of the record, including the recent developments, we found a regional need for the power HMS would generate by 1970-1971, and that PNPC particularly would need additional power by 1967-1968. While Interior disagrees with our conclusion, it alludes to no facts to support its position. We have nevertheless reexamined this issue and find that HMS power will be needed on a regional basis by 1970-1971 as we originally concluded, to which PNPC and WPPSS both agree.

Interior also argues that the Commission erred in not recommending federal development under Section 7(b) of the Federal Power Act. Section 7(b) provides that, "Whenever, in the judgment of the Commission, the development of any water resources for the public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development." The Department interprets this section to mean that once there are Federal projects on a river, all projects possibly affecting them must be undertaken by the United States. The Department states that on the Columbia River system, the choice has been made for us by the Congress.[2] For the reasons stated in our original opinion, we disagree with this interpretation.

In addition, Interior argues that federal development is necessary to achieve that coordination necessary to obtain

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[2] The Department states on p. 8: "Thus, as to the water resource through Asotin, the 'judgment' of the Commission has been replaced by the judgment of Congress."

maximum use of HMS for flood control, navigation and power purposes. We disagree.

With respect to flood control, Article 51 requires PNPC to operate HMS in a manner consistent with optimum flood control purposes at no cost to the government for the loss of any power resulting from such operation.[3] The specific terms of the operation of HMS for flood control purposes are made subject to agreement between Corps of Engineers and the licensee in accordance with principles contained in

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[3] *Article No. 51.* In the interests of flood control downstream from the project, the Licensee shall operate the project in accordance with an agreement to be entered into by the Licensee and the United States Corps of Engineers for the purpose of determining detailed operating procedures for use during flood periods, in accordance with the following principles:

a. The total live storage space of about 2,250,000 acre-feet between elevation 1337 and elevation 1510 mean sea level will be made available for flood control use if and as required.

b. The reservoir level will be no higher than elevation 1475 by 1 March each year to provide about 600,000 acre-feet of storage space for flood control use at that time each year. Additional storage space will be made available between 1 March and the beginning of the flood period to insure the availability on 1 May of the total capacity needed for flood control as estimated by the Corps of Engineers.

c. The space made available as set forth above will be retained until capture of flood flows is requested by the Corps of Engineers, subject to involuntary storage as may be required due to excess of inflows over outlet capacity, or until refilling is authorized by the Corps of Engineers. In the event of involuntary storage during flood control operations, full storage capability will be regained as soon as possible.

d. During the flood storage period controlled outflows will be as warranted by the flood control requirements as determined by the Corps of Engineers with due regard to the requirements for the optimum multiple purpose operations of the project. When the Columbia River discharge at The Dalles is 600,000 cfs or higher the daily outflow may be reduced to a minimum of 10,000 acre-feet; except that during years of severe flood conditions the daily outflow may be reduced to a minimum of 4,000 acre-feet; below 600,000 cfs discharge at The Dalles, the outflow will be determined with due consideration given to all purposes of the project.

e. A discharge capacity of 65,000 cfs at minimum pool elevation 1382 is to be provided by the Licensee. This discharge capacity is based on the gated outlet capacity plus one half of the ultimate turbine hydraulic capacity.

The agreement will be subject to review from time to time as requested by the Licensee or the Corps of Engineers.

the Article. This article is consistent with PNPC's unqualified commitment to operate HMS in such manner.[4] Upon our own motion, we are eliminating the last sentence of Article 51 since it is ambiguous and adds nothing of substance to the Article.

In addition, Article 52 requires PNPC to maintain a minimum flow of not less than 13,000 cfs when determined to be required—not by PNPC—but by the Corps of Engineers.[5] PNPC is not entitled to reimbursement for operating in this manner despite the fact that power benefits may accrue to the downstream federal plant. The minimum flow specified conforms precisely to that recommended by the Corps of Engineers. (FPC Ex. 37)

Article 14 constitutes the provision requiring the licensee to coordinate electrically and hydraulically for power purposes.[6] This Article presupposes, as does the coordination of any endeavor, the willingness to plan cooperatively in order to serve the region in the most effective and enlightened manner. Certainly, the object of providing the optimum firm load carrying ability and of producing the maxi-

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[4] We have said to you positively we will produce flood control storage from this project as requested by the Corps of Engineers, without compensation, at any time, with or without Canadian storage at any time, without reservation, we will do it. (Tr. 14,770-1)

[5] *Article 52.* In the interest of navigation the project shall be operated in accordance with the following requirements:

a. Minimum flow of not less than 13,000 cfs will be maintained at Lime Point, Idaho, during annual storage refill season when determined to be required by the Corps of Engineers in the interest of navigation. Flows of up to 16,500 cfs may be required at other times when determined by the Corps of Engineers to be necessary in the interest of navigation.

b. River fluctuations in the reach between Lewiston and Lime Point resulting from project operation shall not exceed a rate of one and a half feet per hour on the rising stage, and one foot per hour on the falling stage unless otherwise approved by the Corps of Engineers.

[6] *Article 14.* The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

mum amount of usable secondary energy for the region could be frustrated by any participant, be he federal, public or private. However, it is beyond reasonable belief that any responsible agency, whether federal, public or private, would in the face of enlightened public opinion deliberately seek to sabotage the object of Article 14 which was designed to secure for the Northwest benefits heretofore recognized but, until recently, seldom obtainable for a mixed river basin system.

Interior for the first time in its application for rehearing, questions the adequacy of Article 14 which, until now, enjoyed the support of all the parties in the case. Interior's objective and purpose, namely, "to optimize regional power production consistent with other water resource development and purpose," is the same as ours. We, like Interior, recognize that "coordination may permit storage of water in one party's reservoir for the benefit of another. It may permit an exchange of winter energy from one system for summer energy of another thereby increasing the firm capabilities of both systems. It may reduce the requirement of reserve capacity to the benefit of both systems. It may permit the joint use of transmission facilities or the exchange of energy between systems so as to reduce transmission requirements."[7] In addition, coordination may include the planning of new generating resources and scheduled maintenance and the sharing of resources.

We believe that, in keeping with the spirit referred to above plus the legal effect of Article 14, we will achieve the notable results sought by us all. However, we do not believe that the Article proposed by Interior, insofar as it refuses to recognize an equitable sharing of benefits in the context of a mixed system of plants in a common basin, will result in the maximum economic benefit to the region.[8] Only by recognizing the contributions of each system in

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[7] Comments of Interior, March 13, 1964, pp. 22-23, Project No. 1971.

[8] This is not to say, as Interior alleges, that Article 14 requires the federal government to pay for headwater benefits—a payment precluded by Section 10(f) of the Act. As we have earlier stated, Article 14 does not require 10(f) payments. *P.U.D. No. 1 of Douglas County, Project No. 2149*, 28 FPC 128.

providing for an equitable sharing of benefits will the optimum development of our resources envisioned by the framers of the Water Power Act become a reality. This represents nothing novel to this region. As a matter of fact, this approach is entirely consistent with the principles underlying the Pacific Northwest Coordinating Agreement, an agreement to which Interior (BPA), PUD's and private power companies are parties.

We do agree with Interior that the licensee should be obliged to provide transmission facilities necessary to effectuate the desired coordination. It had been our understanding that this requirement was implicit in Article 14. In view of Interior's concern, it is apparent that this understanding is not shared by all interested parties. We will therefore amend the Article to expressly include this requirement in order to obviate any debate in the future. We are also modifying the Article to clarify our original idea that this Article is designed to maximize power production and other beneficial public uses.

Beyond the changes noted above, we are satisfied that Article 14 requires no further modification. We have described the general principles applicable thereto and do not consider it feasible to reduce them into concrete terms at this time. By the time HMS will be ready for operation, the factual situation and the consequent requirements may be substantially different from those prevailing at this time.